

In order for a transaction to qualify for exemption on the basis of the Farm machinery & Equipment exemption, a certification must be obtained containing the information set out at 86 Ill. Adm. Code 130.305(m). (This is a GIL.)

September 26, 2001

Dear Xxxxx:

This letter is in response to your letter that we received on July 17, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA, headquartered in CITY/STATE are potential lessors of various agricultural equipment in the state of Illinois. We want to be sure we comply with reporting requirements as prescribed by Illinois Chapter 35 Revenue, Use and Occupation Taxes [35 ILCS].

Currently, we expect all leases in Illinois to be true leases of farm machinery and equipment. Per 35 ILCS 105/3-5 farm machinery and equipment certified by the purchaser to be used primarily for production agriculture is exempt from Illinois sales and use tax (ROT, SOT, UT, and SUT). Equipment purchased for lease is included in the exemption. The Illinois Department of Revenue has verbally advised us that because farm machinery is exempt from sales/use taxation in the state, we do not need a sales tax permit and do not need to report gross receipts, deductions and taxable receipts to the state. In the future we may enter into leases of other types of tangible personal property other than farm machinery/equipment. Most likely, these leases would be for hog or dairy facilities or grain bins. Future leases could be structured as either true leases or conditional sales contracts for Illinois sales/use tax purposes.

Please clarify whether this verbal advice is correct. Otherwise, please advise what steps should be taken to assure appropriate registration and reporting.

Your timely response to this issue is greatly appreciated. If you require further information, please contact me.

We have enclosed 86 Ill. Adm. Code 130.305, the regulation covering the Illinois sales/use tax exemption afforded machinery and equipment used primarily in production agriculture. Notwithstanding the fact that sales may be at retail, the Illinois Retailers Occupation Tax (i.e. sales

tax) does not apply to sales of machinery and equipment used or leased for use primarily in production agriculture or in State or Federal agricultural programs.

No item qualifies for the exemption in and of itself and no transaction is exempt unless the seller obtains a certification that contains the information required by Section 130.305(m). When a lessor purchases exempt farm machinery or equipment for the purpose of leasing, the lessor can claim the exemption by executing and submitting a certification to his vendor that contains the seller's name and address, the purchaser's name and address and a statement that the property purchased will be leased for use primarily in production agriculture or in State or Federal agricultural programs.

Machinery or equipment that is used both in qualifying and non-qualifying activities must be used primarily in a qualifying activity in order for the exemption to apply.

For general informational purposes we enclose a copy of 86 Ill. Adm. Code 130.2010, the Department's regulation that covers the taxation of leases. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the leased property and lessors under true leases incur Use Tax liability on their cost price of such property.

Under Section 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales whose total receipts are subject to Retailers' Occupation Tax. Such would be the case when the agreements contain one dollar or other nominal purchase options.

Section 10 of the Illinois Use Tax Act states in part:

"A user who is liable to pay use tax directly to the Department only occasionally and not on a frequently recurring basis, and who is not required to file returns with the Department as a retailer under Section 9 of this Act, . . . need not register with the Department. However, if such a user has a frequently recurring direct use tax liability to pay to the Department, such user shall be required to register with the Department on forms prescribed by the Department and to obtain and display a certificate of registration from the Department. In that event, all of the provisions of Section 9 of this Act concerning the filing of regular monthly, quarterly or annual tax returns and all of the provisions of Section 2a of the "Retailers' Occupation Tax Act" concerning the requirements for registrants . . . shall apply to such users to the same extent as if such provisions were included herein." 35 ILCS 105/10

This means lessors who only occasionally incur use tax liability that they must pay directly to the Department and who are not otherwise required to be registered for sales tax filing purposes, are not required to register with the Department and file sales/use tax returns on a regular basis. They are, however, required to pay the Use Tax on taxable purchases, either to their supplier or to this Department if the supplier does not collect it. This could include a lessor who only rents exempt farm machinery but occasionally incurs a Use Tax liability on purchases of nonexempt tangible personal property purchased for leasing purposes. If, however, a lessor rents tangible personal property that is not exempt on a frequently recurring basis, the lessor would be required to register with the Department.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.